No. 05-_____

In The
Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Petition For Writ Of Certiorari To The Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

From outside a home at 3:00 a.m., officers witnessed a tumultuous struggle between four adults and a juvenile. Upon seeing the juvenile punch one of the adults in the face, the officers entered the home to quell the violence. The questions presented are:

1. Does the "emergency aid exception" to the warrant requirement recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978), turn on an officer's subjective motivation for entering the home?

2. Was the gravity of the "emergency" or "exigency" sufficient to justify, under the Fourth Amendment, the officers' entry into the home to stop the fight?

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PETITION FOR WRIT OF CERTIORARI

The State of Utah respectfully petitions for a writ of certiorari to review the judgment of the Utah Supreme Court in this case.

OPINIONS AND ORDERS

The opinion of the Utah Supreme Court is reported at 2005 UT 13, 519 Utah Adv. Rep. 17 (App. 1-33). The opinion of the Utah Court of Appeals is reported at 2002 UT App 317, 57 P.3d 1111 (App. 34-45). The order of the First Judicial District Court of Utah, Box Elder County, granting respondents' motion to suppress is unreported (App. 46-48).

JURISDICTION

The decision of the Utah Supreme Court was entered on February 18, 2005. The State's petition for rehearing was denied on July 18, 2005 (App. 49). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

1. Summary of Facts. At 3:00 a.m. on July 23, 2000, Brigham City police officers were dispatched to a local residence in response to a complaint about a loud party. App. 2-3. Four officers responded, converging at the street curb in front of the residence. R. 99: 7-11. The officers concluded that the commotion from the home "sounded like there was an altercation occurring, some kind of fight." R. 99: 11, 29. They heard "thumping," people yelling "stop, stop," and someone saying, "get off me." R. 99: 10.

The officers walked up to the house and looked through the front window to "ascertain what was going on." R. 99: 13. They observed a beer bottle on the ledge of the front window, but could see nothing inside. R. 99: 13-14. Leaving one officer to guard the front door, the other three walked to the corner of the house and down the driveway to the backyard fence "to investigate where [the fight] was coming from." R. 99: 15-16. Peering into the backyard through the fence, the officers saw two teenage males drinking alcoholic beverages, but no fight. App. 2-3. They concluded that the fight was in the back of the home – it "was just as severe as when [they had] arrived." R. 99: 18.

"[C]oncerned about the fight," the officers entered the backyard and Officer Jeff Johnson and a second officer walked to the back of the house to investigate. App. 2-3; R. 99: 19-21. Through a window, the officers saw four adults trying to restrain a juvenile against a refrigerator. App. 3;

R. 99: 22. The juvenile's hands were doubled into fists and he was "twisting and turning and writhing" in an effort to break free from the grasp of the adults. R. 99: 22, 40-41. All the while, the combatants were threatening each other and exchanging obscenities. R. 99: 21-22, 54-55. The officers walked past a second window to an open back door. R. 99: 22. The screen door was shut. R. 99: 21.

After reaching the screen door, Officer Johnson saw the juvenile wrest a hand free and "land a punch squarely on the face" of one of the adults, drawing blood. App. 2-3; R. 99: 22, 41, 55. Upon seeing the punch, and in the midst of a flurry of activity that ensued to control the juvenile, Officer Johnson opened the screen door and yelled "police," but it "was so loud [and] tumultuous, that nobody heard a word." App. 2, 18; R. 99: 23, 42. The officers then entered the kitchen and Officer Johnson again yelled as loudly as he could. App. 2; R. 99: 23. The occupants gradually became aware of the officers' presence and the altercation abated. App. 2; R. 99: 23, 45. To prevent anyone else from getting hurt, the officers stepped between the combatants and handcuffed the juvenile. R. 99: 23-24.

When Officer Johnson asked the adult assault victim if he needed assistance, the occupants "turned and became verbally hostile," demanding that the officers leave. App. 2; R. 99: 24. The situation deteriorated from there and the adult occupants were subsequently arrested for disorderly conduct, intoxication, and contributing to the delinquency of a minor. App. 3; R. 99: 62-63.

2. Motion to Suppress. Respondents moved to suppress the evidence of alcohol consumption found inside the home, arguing that the officers' entry violated their Fourth Amendment rights. The trial court granted the

motion, ruling that there were "no exigent circumstances to justify the officers' entry into the residence." App. 47. The court ruled that what the officers "should have done, as required under the 4th Amendment, was knock on the door," even though "the evidence [was] that the occupants probably would not have heard [it]." App. 47.

3. Utah Court of Appeals Decision. The City appealed and in a 2-1 decision, the Utah Court of Appeals affirmed. App. 34-45. The majority concluded that nothing in the findings indicated that "the altercation posed an immediate serious threat or created a threat of escalating violence." App. 40. In dissent, Judge Bench observed that "[i]t is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further." App. 44.

4. Utah Supreme Court Decision. On certiorari, the Utah Supreme Court affirmed, holding that the officers' entry was not justified under either the "emergency aid" exception recognized in *Mincey v. Arizona*, 437 U.S. 385, 392 (1978), or the "exigent circumstances" exception. App. 11-25. The court distinguished the two exceptions, reasoning that the emergency aid exception applies when officers serve a caretaking function and that the exigent circumstances exception applies when officers "pursu[e] a law enforcement mission." App. 16. The court admitted that "this classification scheme is artificial and simplistic," but deemed it useful in evaluating such entries. App. 16.

Emergency Aid Exception. The court applied a three-part test in determining whether an emergency justified the warrantless entry. The City was required to show that: (1) there was "'an objectively reasonable basis to believe'" that there was an emergency requiring immediate assistance

"'for the protection of life,'" i.e., that "'an unconscious, semi-conscious, or missing person feared injured or dead [was] in the home'"; (2) "'[t]he search [was] not primarily motivated by intent to arrest and seize evidence'"; and (3) "'[t]here [was] some reasonable basis to associate the emergency with the area or place to be searched.'" App. 12-13 (citation omitted). The court held that the emergency aid exception did not apply because: (1) having "provid[ed] no medical assistance whatsoever," the officers failed the motivation test, and (2) the gravity of harm fell short of "serious bodily injury." App. 14.

Exigent Circumstances Exception. A 3-2 majority held that the warrantless entry was not justified under the exigent circumstances exception. App. 15-25. The majority held that the harm being inflicted during the fight was insufficient to justify an "exigent circumstances" entry. App. 18-19. It concluded that occupants of a home may "engage in acts that meet the legal definition of assault" without risking a warrantless intrusion by police. App. 18. The majority held that the quantum of harm needed to justify an "exigent circumstances" entry into the home is greater when the safety risk is to its inhabitants rather than to officers. App. 16-18.

The majority also held that the officers violated the Fourth Amendment because they did not first knock to try to gain the occupants' attention from outside the residence. App. 19-20. The majority did so even while acknowledging the trial court's finding that "a knock probably would not have been heard." App. 19-20. The majority held that the officers should have given "thought to the constitutional implications associated with where they announced their presence," and it "speculate[d]" that if the officers had knocked, they might have "achieved the

two-fold objective of quelling the disturbance by making their presence known and honoring the constitutional integrity of the dwelling." App. 20.

Dissent. Joined by Justice Wilkins, Justice Durrant dissented from the majority's exigent circumstances opinion, concluding that the majority's standard of risk "consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent." App. 31. Citing the trial court's finding that a knock probably would not have been heard and this Court's decision in *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997), the dissent concluded that "it is not unreasonable for officers to bypass knocking or announcing their presence if such an action would be futile, dangerous, or inhibit an effective investigation of the suspected crime." App. 32 (Durrant, J., concurring and dissenting).

REASONS FOR GRANTING THE PETITION

In *Mincey v. Arizona*, this Court recognized "the right of the police to respond to emergency situations," such as when there is an immediate "'need to protect or preserve life or avoid serious injury.'" 437 U.S. 385, 392-93 (1978) (quoting *Wayne v. United States*, 318 U.S. 205, 212 (D.C. Cir. 1963). More generally, this Court has long recognized that an officer may enter a home without a search warrant when there is "a plausible claim of specially pressing or urgent law enforcement need, *i.e.*, 'exigent circumstances.'" *Illinois v. McArthur*, 531 U.S. 326, 331 (2001) (citations omitted). The Utah Supreme Court misapplied

both exceptions, and in so doing exacerbated lower court confusion about their application.

The federal courts of appeal and state supreme courts are divided over whether subjective motivation plays a role in determining whether an emergency aid entry is justified under *Mincey*. Two federal courts of appeal and six state supreme courts have held that subjective motivation is irrelevant; the only issue is whether a reasonable officer would have believed that a person inside the home was in need of immediate aid. By contrast, three federal courts of appeal and thirteen state supreme courts (including Utah) have held that the exception applies only if an officer's subjective motivation for the intrusion was to provide aid (as opposed to enforcing the law). This Court should resolve the conflict.

The lower courts are also in disarray over how grave the danger or wrongdoing must be to justify warrantless entries under either the "emergency aid exception" or the "exigent circumstances exception." In this case, as the dissent observed, the Utah court imposed a standard that "consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent." App. 31 (Durrant, J., concurring and dissenting). A principled, uniform national standard is needed on this issue as well.

This Court should grant certiorari to ensure consistent application of Fourth Amendment principles on these important and recurring questions and to reverse the Utah Supreme Court's manifestly erroneous holding.

A. Courts Are Deeply Divided Over Whether the Subjective Motivations of Police Officers Are Relevant In Judging "Emergency Aid" Intrusions.

In *Mincey*, this Court observed that "[n]umerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." 437 U.S. at 392. The Court did not approve or otherwise address the specific holdings of those cases because the Arizona officers' initial entry to search for shooting victims and provide aid was not at issue on certiorari. *See Id*. at 392-93 & nn. 6 & 7.[1] But in dictum, the Court agreed that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (citation omitted).

State and federal courts have since cited *Mincey* as recognizing an "emergency aid exception" to the warrant requirement. But because *Mincey* did not articulate a standard by which "emergency aid" entries should be judged, the cases have been anything but consistent. And

[1] Immediately following the fatal shooting of an undercover officer in the home of a suspected drug dealer, officers entered the home in search of other victims and requested medical aid. *Mincey*, 437 U.S. at 387-88. After the scene was secured, homicide detectives conducted a warrantless search for evidence. *Id*. at 388-89. This Court held that the warrantless search for evidence violated the Fourth Amendment's warrant requirement. *Id*. at 390-95. The Court refused to adopt Arizona's "murder scene" exception and concluded that the search for evidence was not justified under the exigent circumstances exception. *Id*. The validity of the initial entry was unchallenged. *See id*. at 392.

many, including the decision below, have departed from well-settled precedent set by this Court.

Two federal courts of appeal examine emergency entries under the exigent circumstances exception and apply the objective standard traditionally used in Fourth Amendment cases. Under this standard, a warrantless entry into a home is permissible if a reasonable officer would believe that a person is in need of immediate aid. *See In re United States v. Chipps*, 410 F.3d 438, 442 (8th Cir. 2005); *Sealed Case 96-3167*, 153 F.3d 759, 766 (D.C. Cir. 1998). Six state supreme courts have likewise applied an objective standard to emergency entries. *See Wofford v. State*, 952 S.W.2d 646, 651 (Ark. 1997); *People v. Hebert*, 46 P.3d 473, 478-80 (Colo. 2002) (en banc); *State v. Blades*, 626 A.2d 273, 278 (Conn. 1993); *State v. Carlson*, 548 N.W.2d 138, 141-42 (Iowa 1996); *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992); *State v. Scott*, 471 S.E.2d 605, 613-15 (N.C. 1996).

In contrast, three federal courts of appeal have applied a test that scrutinizes an officer's subjective motivation for making an entry. They hold that even if an intrusion is objectively reasonable, the emergency aid exception does not apply if the officer was not subjectively motivated by the need to render aid. *See United States v. Thomas*, 372 F.3d 1173, 1177 (10th Cir. 2004); *United States v. Cervantes*, 219 F.3d 882, 890 (9th Cir. 2000), *cert. denied*, 532 U.S. 912 (2001); *United States v. Borchardt*, 809 F.2d 1115, 1117 (5th Cir. 1987). These cases follow the lead of *People v. Mitchell*, 347 N.E.2d 607 (N.Y. 1976) – a case cited but not approved or otherwise examined by this Court in *Mincey*. *See* 437 U.S at 392-93 & n.6.

Twelve state supreme courts apply some form of the "*Mitchell*" test. *See State v. Fisher*, 686 P.2d 750, 759-61 (Ariz.), *cert. denied*, 469 U.S. 1066 (1984); *People v. Ray*, 981 P.2d 928, 932-39 (Cal. 1999), *cert. denied*, 528 U.S. 1187 (2000); *State v. Drennan*, 101 P.3d 1218, 1231-32 (Kan. 2004); *State v. Plant*, 461 N.W.2d 253, 262-63 (Neb. 1990); *State v. Frankel*, 847 A.2d 561, 567-10 (N.J.), *cert. denied*, 125 S.Ct. 108 (2004); *State v. Ryon*, 108 P.3d 1032, 1039, 1042-43 (N.M. 2005); *Mitchell*, 347 N.E. at 609-10; *Lubenow v. North Dakota State Hwy Comm'r*, 438 N.W.2d 528, 531-33 (N.D. 1989); *State v. Heumiller*, 317 N.W.2d 126, 129 (S.D. 1982); *State v. Mountford*, 769 A.2d 639, 643-47 (Ver. 2000); *State v. Kinzy*, 5 P.3d 668, 675-78 (Wash. 2000) (en banc), *cert. denied*, 531 U.S. 1104 (2001); *State v. Boggess*, 340 N.W.2d 516, 521-22 (Wis. 1983). Utah joined them in this case. App. 12-13.[2]

The conflict among the courts is deep, intractable, and ripe for resolution. Resolving this conflict is important because this Court has "never held, outside the context of inventory search or administrative inspection . . . , that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment." *Whren v. United States*, 517 U.S. 806, 812 (1996). The vitality of the inquiry into an officer's subjective motivations is thus questionable, at best. *See* 3 Wayne R. LaFave, Search and Seizure § 6.6(a) n.17, p. 454 (4th ed. 2004) (citing *Scott v. United States*, 436 U.S. 128, 137-39 (1978)) (questioning whether

[2] In *People v. Davis*, the Michigan Supreme Court specifically declined to determine "whether [it would] adopt the subjective element" of the *Mitchell* test. 497 N.W.2d 910, 921 & n.12 (1993), *cert. denied*, 508 U.S. 947 (1993).

Mitchell's subjective inquiry continues to have vitality as a Fourth Amendment matter).

This Court should resolve the question left unanswered in *Mincey*.

B. Courts Are Divided As to the Gravity of the "Emergency" or "Exigency" That Is Necessary to Justify a Warrantless Search.

Courts have also failed to agree on a consistent standard in judging the gravity of the harm or wrongdoing necessary to justify a warrantless entry, under either the emergency aid exception or the exigent circumstances exception.

Some cases have suggested that an emergency aid entry is justified whenever a person's safety or health is in danger. *See, e.g.*, *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (recognizing that warrantless intrusion "'may be justified by . . . the risk of danger to . . . persons inside or outside the dwelling'"); *Thomas*, 372 F.3d at 1177 (safety); *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1244 (7th Cir. 1994) (harm), *cert. denied*, 513 U.S. 1128 (1995); *United States v. Moss*, 963 F.2d 673, 678 (4th Cir. 1992) (harm); *Borchardt*, 809 F.2d at 1117 (physical harm); *Carlson*, 548 N.W.2d at 141 (physical harm); *Hebert*, 46 P.3d at 479 (safety); *Kinzy*, 5 P.3d at 676 (health or safety); *Boggess*, 340 N.W.2d at 522 (physical injury).

Other cases suggest a more demanding standard, permitting entry to prevent "serious" injury or harm. *See Mincey*, 437 U.S. at 392 ("avoid serious injury"); *In re Sealed Case 96-3167*, 153 F.3d at 766 (same); *United States v. Martins*, 413 F.3d 139, 147 (1st Cir. 2005) (serious

harm); *Chipps*, 410 F.3d at 442 (serious injury); *United States v. Holloway*, 290 F.3d 1331, 1336 (11th Cir. 2002) (serious injury), *cert. denied*, 537 U.S. 1161 (2003); *Cervantes*, 219 F.3d at 889 (serious bodily injury); *Wofford*, 952 S.W.2d at 651 (serious bodily harm); *State v. Applegate*, 626 N.E.2d 942, 944 (Ohio 1994) (serious injury); *Davis*, 497 N.W.2d at 915 (serious harm); *Frankel*, 847 A.2d at 568 (serious injury); *Ryon*, 108 P.3d at 1045 (life or limb).[3]

The Utah Supreme Court has imposed the most restrictive standard, permitting an emergency aid entry only "for the protection of life." App. 12. The court explained that under this standard, the officer must have "'an objectively reasonable belief that an *unconscious*, *semi-conscious*, or *missing person* feared injured or dead' is in the home." App. 13 (citation omitted) (first and last emphases added). *See also Blades*, 626 A.2d at 277-80 (protect or preserve life).

This Court's decision in *Welsh v. Wisconsin*, 466 U.S. 740 (1984), has spawned more confusion. After holding that the gravity of the offense is relevant in determining whether an exigency justifies a warrantless entry, *Welsh* concluded that Wisconsin's driving while intoxicated (DWI) offense was not of sufficient gravity to justify a warrantless entry because it was only a minor offense under state law. *Id*. at 753-54. Although Wisconsin's DWI offense was a noncriminal offense for which no imprisonment was possible, lower courts are divided over whether

[3] Some courts also permit emergency aid entries to protect property. *See Fisher*, 686 P.2d at 760; *Ray*, 981 P.2d at 934; *Drennan*, 101 P.3d at 1231; *Plant*, 461 N.W.2d at 262; *Mitchell*, 347 N.E.2d at 609; *Lubenow*, 438 N.W.2d at 533; *Mountford*, 769 A.2d at 644.

misdemeanor offenses should be treated as minor offenses under *Welsh*.

Some courts have suggested that *Welsh* forecloses application of the exigent circumstances exception for misdemeanor offenses. *See, e.g., Greiner v. City of Champlin*, 27 F.3d 1346, 1353 (8th Cir. 1994) (concluding that *Welsh* "casts serious doubt on the question of whether a warrantless home arrest for a misdemeanor will ever be deemed reasonable"); *Reardon v. Wroan*, 811 F.2d 1025, 1028 (7th Cir. 1987) (concluding that *Welsh* holds "that, at a minimum, exigent circumstances do not exist when the underlying offense is minor, typically a misdemeanor"); *Othoudt*, 482 N.W.2d at 223-24 (observing that no court "has ever held that exigent circumstances would permit a warrantless entry into a home to arrest for an offense of lesser magnitude than a felony"); *see also Howard v. Dickerson*, 34 F.3d 978, 982 (10th Cir. 1994) (holding that misdemeanor offenses for careless driving and leaving the scene of an accident that are punishable by up to 90 days in jail "do not warrant the extraordinary resource of warrantless home arrest").

The majority in this case joined these courts. Although the majority did not discuss *Welsh*, it distinguished emergencies or exigencies that will justify a warrantless intrusion from those that will not in the same way Utah law distinguishes felony assaults from misdemeanor assaults. *Compare* Utah Code Ann. § 76-5-103 (1999) (making it a felony for an assault that causes "serious bodily injury") *with* Utah Code Ann. § 76-5-102 (1999) (making it a misdemeanor for an assault causing less severe injury). The Utah court thus created a rule that effectively precludes entries based on a misdemeanor offense. The majority reasoned that an assault must be more serious to

justify entry because occupants of a home "may well choose to expose themselves to greater actual or potential harm to preserve their right to be left alone in their homes" and "may even engage in acts that meet the legal definition of assault," free from the risk of a warrantless intrusion. App. 18.

By contrast, other courts have concluded that *Welsh* does not foreclose entries based on misdemeanor offenses, particularly where the offense involves violence or a risk of harm to others. *See, e.g., Joyce v. Town of Tewksbury*, 112 F.3d 19, 22 (1st Cir. 1997) (holding that misdemeanor classification of assault "does not reduce it to a 'minor offense'" under *Welsh*); *State v. Lovig*, 675 N.W.2d 557, 565-66 (Iowa 2004) (concluding that misdemeanor DWI of sufficient gravity to justify warrantless intrusion, but noting significant split of authority on issue); *State v. Paul*, 548 N.W.2d 260, 267 (Minn. 1996) (concluding that misdemeanor DWI of sufficient gravity to justify warrantless intrusion); *State v. Jones*, 667 A.2d 1043, 1049 (N.J. 1995) (recognizing that "the category of misdemeanors today includes enough serious offenses to call into question the desirability" of making exigent circumstance entries dependent on whether the offense is a misdemeanor or felony).

In sum, there is at present no clear, uniform, and principled standard to guide courts in their assessment of the gravity of harm or wrongdoing necessary to justify a warrantless entry. That void has bred confusion among the courts, if not outright division. The time is ripe for this Court to articulate an appropriate standard.

C. The Officers' Entry Into the Home to Stop the Fight Was Reasonable Under the Fourth Amendment.

The Brigham City officers' entry into the home was not only reasonable, but compelled by the circumstances. The officers would have been derelict in their duty had they not acted.

"[O]utside the context of inventory search or administrative inspection," this Court has consistently judged warrantless intrusions against an objective standard, without regard to an officer's underlying intent or motivation. *Whren*, 517 U.S. at 811-13. The Utah court applied a test that squarely conflicts with this objective test, concluding that the officers' entry was unreasonable in part because the officers' subjective motivation for entering was to further a law enforcement purpose rather than to render medical aid. App. 11-14. This was manifest error.

Under the objective test, a warrantless entry is justified if " 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at 393-94 (citation omitted). "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" at the time of the intrusion. *Graham v. Connor*, 490 U.S. 386, 397 (1989) (applying objective test in use of force case). The "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Id*. at 396-97. Therefore, "room must be allowed for some [reasonable] mistakes on their part.' " *Illinois v. Rodriguez*, 497

U.S. 177, 186 (1990) (quoting *Brinegar v. United States,* 338 U.S. 160, 176 (1949)).

The Brigham City officers' entry in this case was "objectively justifiable" under the Fourth Amendment. *See Whren*, 517 U.S. at 812. Upon their arrival at the front curb of the house, the officers heard a fight in progress. The altercation continued with no drop in intensity as the officers investigated first from the front window, then from the driveway, and finally from the back door. Even as the officers watched the four adults fight to restrain the juvenile, they did not enter. But when the juvenile wrested a hand free and punched one of the men in the face, the officers acted. They opened the screen door and yelled. When this failed to gain the combatants' attention, they entered the kitchen and again shouted. Only then did the violence stop, albeit gradually.

The officers' intervention was justified to quell the ongoing violence and prevent further harm to those inside. As observed by the dissent, the officers "were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury." App. 30 (Durrant, J., concurring and dissenting). And because the altercation was in the kitchen, an officer could reasonably believe that "a knife [could be] pulled from a nearby drawer, elevating the potential severity of physical harm that a participant in the fight—or an innocent bystander—could suffer." *See* App. 31 (Durrant, J., concurring and dissenting); R. 99: 45-46.

The Utah Supreme Court held that the harm inflicted and the gravity of the offense committed did not justify the warrantless entry. App. 13-19. In so holding, the court

disregarded this Court's express recognition that warrantless intrusions are justified to quell ongoing violence, *see Welsh*, 466 U.S at 751, and prevent serious harm to others, *Mincey*, 437 U.S. at 392 (citation omitted). As observed by the First Circuit Court of Appeals, "[e]vidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists." *Fletcher v. Town of Clinton*, 196 F.3d 41, 49 (1st Cir. 1999). The officers here were confronted with all but the shots fired.

The Utah Supreme Court recognized that "[i]t was the acknowledged presence of the authority of the police that quenched the heat in the kitchen." App. 18. Yet, it opined that the only question facing the officers before entering was whether the adults would successfully subdue the juvenile. App. 19. The court assumed too much. Neither it, nor the officers, possessed the clairvoyance to know how the fight would play out. Neither the court, nor the officers, could know whether the violence would escalate. Nor could they know "which of the parties to the melee were victims and which were instigators." App. 29 (Durrant, J., concurring and dissenting). In any event, such speculation—judged from the cool of the courtroom rather than the heat of the kitchen—squarely conflicts with this Court's mandate in *Graham*. Reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396 (addressing reasonableness in use of force case).

Finally, while acknowledging the trial court's finding that the altercation was so loud and tumultuous that "the occupants probably would not have heard" a knock at the door, the majority in this case held that the Fourth

Amendment required the officers to nevertheless try. App. 19-20, 47. Again, and as noted by the dissent, App. 31-32, the majority's holding squarely conflicts with well-settled precedent from this Court. Officers may forego knocking if they "have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile. . . . " *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) (explaining the circumstances that justify a no-knock entry when executing a knock-and-announce warrant).

* * *

In sum, the officers' entry to quell the violence and prevent further injury was reasonable. Just as "it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze," *Michigan v. Tyler*, 436 U.S. 499, 509 (1978), so too would it defy reason to suppose that police officers must secure a warrant or consent before entering a home to put down an ongoing fight.

D. The Questions Presented Are Important and Recurring.

The importance of these questions is great, particularly where the dangers are occasioned by violence in the home. "In those disputes, violence may be lurking and explode with little warning." *Fletcher*, 196 F.3d at 50. These situations "require police to make particularly delicate and difficult judgments quickly." *Id*. Although Fourth Amendment rights are not and should not be suspended in furtherance of safety, neither should courts "consign[ ] law enforcement to the porch steps until it is

too late" to prevent harm to those inside. App. 31 (Durant, J., concurring and dissenting).

As evidenced by the numerous federal circuit court and state supreme court cases cited, police are frequently confronted with situations that require prompt action. And often, these emergencies occur under circumstances that suggest the possibility of domestic violence, an ever growing problem confronting the justice system.

Given the importance and frequency of "emergency" calls by law enforcement, there is a compelling need for this Court's intervention and guidance.

CONCLUSION

For the reasons stated above, the City's petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE SUPREME COURT OF THE STATE OF UTAH

Brigham City,
Plaintiff and Petitioner,
v.
Charles W. Stuart, Shayne R.
Taylor and Sandra A. Taylor,
Defendants and Respondents.
No. 20021004
FILED February 18, 2005

2005 UT 13

First District, Brigham City

The Honorable Clint S. Judkins

Attorneys: Mark L. Shurtleff, Att'y Gen., Jeffrey S. Gray,

Asst. Att'y Gen., Salt Lake City, Leonard J.

Carson, Brigham City, for petitioner

Rod Gilmore, Layton, for respondent

On Certiorari to the Utah Court of Appeals

NEHRING, Justice:

¶1 We granted certiorari to review the court of appeals's affirmance of the trial court's order granting defendants Charles Stuart and Shayne and Sandra

Taylor's motion to suppress evidence obtained during a warrantless entry into a home. The single issue we are called upon to decide is whether the court of appeals properly affirmed the trial court's determination that the warrantless entry was not supported by exigent circumstances and was, therefore, unlawful. We conclude that the court of appeals was correct and affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

¶2 Four Brigham City police officers responded to a complaint of a loud party. They arrived at the offending residence at about three o'clock in the morning. They traveled to the back of the house to investigate the noise. From a location in the driveway, the officers peered through a slat fence and observed two apparently underage males drinking alcohol. The officers then entered the backyard through a gate, thereby obtaining a clear view into the back of the house through a screen door and two windows. The officers saw four adults restraining one juvenile. The juvenile broke free, swung a fist and struck one of the adults in the face. Two officers then opened the screen door and "hollered" to identify themselves. When no one heard them, they entered the kitchen. After entering, one of the officers again shouted to identify and call attention to himself. As those present in the kitchen became aware of the officers, they became angry that the officers had entered the house without permission.

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[1] Search and seizure cases are "highly fact dependant." *State v. Warren*, 2003 UT 36, ¶ 2, 78 P.3d 590. Therefore, the trial court's factual findings are supplemented with relevant, objective facts gleaned from testimony given during the evidentiary hearing that was held on March 22, 2001.

¶3 The officers subsequently arrested the adults. They were charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication. The defendants filed a motion to suppress which gave rise to this petition.

¶4 The trial court entered the following findings of fact in support of its order granting the motion to suppress:

> "1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City Police officers were dispatched . . . as a result of a call concerning a loud party.
>
> 2. After arrival at the residence, the officers, from their observations from the front of the residence, determined that it was obvious that knocking on the front door would have done no good. It was appropriate that they proceed down the driveway alongside the house to further investigate.
>
> 3. After going down the driveway on the side of the house, the officers could see, through a slat fence, two juveniles consuming alcoholic beverages. At that point, because of the juveniles, there was probable cause for the officers to enter into the backyard.
>
> 4. Upon entering the backyard, the officers observed, through windows and a screen door an altercation taking place, wherein it appeared that four adults were trying to control a juvenile. At one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose.

> 5. At that point in time, the court finds no exigent circumstances to justify the officers' entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard, but under the 4th amendment he has an obligation to at least attempt before entering."

Brigham City v. Stuart, 2002 UT App 317, ¶ 12, 57 P.3d 1111 (quoting trial court order).

¶5 The court of appeals determined that Brigham City had not challenged the trial court's findings of fact and denied an attempt by Brigham City to supplement the factual findings. *Id.* at ¶ 6. The court of appeals adopted the facts as found by the trial court and based its holding on them. *Id.*

¶6 Brigham City has urged us to expand our review of the facts to include all of the evidence received at the suppression hearing. Brigham City did not, however, ask us to review the court of appeals's denial of its attempt to expand the scope of reviewable facts. We therefore confine the factual component of our review to the facts considered by the court of appeals.

STANDARD OF REVIEW

¶7 When reviewing cases under certiorari jurisdiction, we apply a standard of correctness to the decision made by the court of appeals rather than the trial court. *State v. Warren*, 2003 UT 36, ¶ 12, 78 P.3d 590. However, the ultimate question of whether a particular set of facts

satisfies a given legal standard is a mixed question of law and fact. *State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

¶8 We recently announced our intention to review for correctness mixed questions of law and fact in search and seizure cases and to undertake this task based on a totality of the circumstances. *State v. Brake*, 2004 UT 95, ¶ 15, 103 P.3d 699. In *Brake*, we cited a desire to develop uniform search and seizure standards to aid law enforcement officers as the reason for adopting a less deferential standard when reviewing whether a particular set of facts surrounding a warrantless search or seizure offended constitutional protections. *Id.* at ¶ 14. The court of appeals issued its opinion in this case before we modified the standard of review in *Brake*. Although we conduct our review under the standard announced in *Brake*, we nevertheless reach the same conclusion that the court of appeals reached under its "measure of deference" standard.

¶9 The accuracy of the subsidiary facts relied upon by the court of appeals was unchallenged. Our review is therefore limited to the correctness of the legal conclusion reached by the trial court and ratified by the court of appeals that no exigent circumstances justified the officers' entry into the home.

¶10 Our aspiration to provide useful guidance to those charged with the day-to-day responsibility of putting search and seizure law into practice is handicapped by the manner in which search and seizure cases are presented to us. This case, like *Brake* and an array of its search and seizure predecessors,[2] either does not raise or inadequately

[2] *E.g.*, *State ex rel. A.C.C.*, 2002 UT 22, 44 P.3d 708; *State v. Norris*, 2001 UT 104, 48 P.3d 872; *State v. Bisner*, 2001 UT 99, 37 P.3d 1073.

briefs a state constitutional claim. The reluctance of litigants to take up and develop a state constitutional analysis is surprising in light of our repeated statements that federal Fourth Amendment protections may differ from those guaranteed our citizens by our state constitution. *See, e.g.*, *State v. Debooy*, 2000 UT 32, ¶ 12, 996 P.2d 546 ("While this court's interpretation of article I, section 14 has often paralleled the United States Supreme Court's interpretation of the Fourth Amendment, we have stated that we will not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this state's citizens."); *State v. Watts*, 750 P.2d 1219, 1221 n.8 (Utah 1988) ("[C]hoosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating this state's citizens from the vagaries of inconsistent interpretations given to the fourth amendment by the federal courts."); *State v. Hygh*, 711 P.2d 264, 271-73 (Utah 1985) (Zimmerman, J., concurring) (stating that state and federal search and seizure law are not identical).

¶11 In *Brake*, for example, we took issue with the usefulness of federal Fourth Amendment jurisprudence concerning the police officer safety justification for warrantless automobile searches. *Brake*, 2004 UT 95 at ¶¶ 27-31. Our reasoning in *Brake* emanated to a great extent from cases in which we concluded that article I, section 14 of the Utah Constitution provides a greater expectation of privacy than the Fourth Amendment as interpreted by the United States Supreme Court.

¶12 Where the parties do not raise or adequately brief state constitutional issues, our holdings become inevitably contingent. They carry within them an implicit qualification that if properly invited to intervene, our

state's Declaration of Rights might change the result and impose different demands on police officers and others who in a very real sense are the everyday guardians of constitutional guarantees against unreasonable searches and seizures.

¶13 In the not so distant history of this court, we engaged in an ongoing and robust discussion over whether and to what extent we should defer to the federal courts when called upon to interpret provisions of our Declaration of Rights, which parallel the federal Bill of Rights. *State v. Anderson*, 910 P.2d 1229, 1234-42 (Utah 1996); *State v. Poole*, 871 P.2d 531, 534-36 (Utah 1994); *State v. Larocco*, 794 P.2d 460, 465-71 (Utah 1990). In *Anderson*, we counseled against departing from the guidance from federal courts except when "compelling circumstances" required it. 910 P.2d at 1235. To do otherwise would cause unnecessary confusion and undercut the policy objective of giving clear direction to judges and law enforcement officials. *Id.* Justice Stewart in his concurrence cautioned against unquestioning fealty to federal precedent on matters of individual liberty. *Id.* at 1240. He defended his view by noting that "[t]he framers of the Utah Constitution necessarily intended that this Court should be both the ultimate and final arbiter of the meaning of the provisions in the Utah Declaration of Rights and the primary protector of individual liberties." *Id.*

¶14 The debate over the proper relationship between the Bill of Rights and Declaration of Rights has lain dormant for almost a decade. This lull does not signal resolution of the matter. The mere passage of time and the accumulation of decisions issued by this court on appeals brought solely on Fourth Amendment grounds may, however, ultimately overpower the merits of an independent

analysis of search and seizure law under our Declaration of Rights. It would be unfortunate, indeed, if such a de facto abdication of our responsibility as guardians of the individual liberty of our citizens were to occur. Because we are resolute in our refusal to take up constitutional issues which have not been properly preserved, framed and briefed, *State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 346; *State v. Lopez*, 886 P.2d 1105, 1113 (Utah 1994), we are once again foreclosed from undertaking a principled exploration of the interplay between federal and state protections of individual rights without the collaboration of the parties to an appeal. This collaborative effort should be renewed.

ANALYSIS

¶15 The right to be free of unreasonable searches and seizures is one of the most cherished rights guaranteed by the Utah and United States Constitutions. *State v. Trane*, 2002 UT 97, ¶ 21, 57 P.3d 1052. The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. A "cardinal principle" derived by this language is that warrantless searches "'are *per se* unreasonable under the Fourth Amendment.'" *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Nowhere is this principle more zealously guarded than in a person's home, which is

one of four domains expressly granted the security promised by the Fourth Amendment. The Supreme Court has interpreted the Fourth Amendment as "draw[ing] 'a firm line at the entrance to the house,'" *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980)), where even an "officer who barely cracks open the front door and sees nothing" is deemed to have violated its venerable protections, *id.* at 37.

¶16 Even this most highly protected realm may, however, be subject to intrusion in exceptional circumstances where "the needs of law enforcement [are] so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at 394. We have acknowledged that the requisite compelling need to enter a dwelling exists in the presence of probable cause and exigent circumstances. *State v. Ashe*, 745 P.2d 1255, 1258-59 (Utah 1987). Probable cause exists where the facts that an officer has acquired from reasonably trustworthy sources are sufficient to permit a reasonably cautious person to believe that an offense has been, or is being, committed. *State v. Dorsey*, 731 P.2d 1085, 1088 (Utah 1986).

¶17 Here, the officers' observation of the consumption of alcohol by underage youths and the blow struck by the juvenile in the kitchen of the dwelling were sufficient to establish probable cause and thus are not at issue. Brigham City instead challenges the court of appeals's determination that exigent circumstances did not exist.

¶18 The court of appeals has correctly characterized exigent circumstances as "those 'that would cause a reasonable person to believe that [immediate] entry . . . was necessary to prevent physical harm to the officers or

other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'" *State v. Beavers*, 859 P.2d 9, 18 (Utah Ct. App. 1993) (quoting *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984)).

¶19 Among the categories of possible exigent circumstances, only one is relevant here: whether the altercation within the dwelling and the blow struck by the juvenile could give rise to the officers' reasonable belief that their immediate entry was necessary to prevent physical harm to the occupants of the house. With this refinement of our inquiry, we confront the nub of the matter: how grave must the impending harm be to create an exigent circumstance? According to Brigham City, the answer to this question is "not very." Brigham City insists, not implausibly, that it would "defy reason to suppose that peace officers must secure a warrant or consent before entering a house to break up a fight." Brigham City finds support for this view in the observation of Judge Bench in his dissenting opinion that "[i]t is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further." *Brigham City v. Stuart*, 2002 UT App 317, ¶ 20, 57 P.3d 1111.

¶20 Such a restraint on police officer intervention would almost certainly justify the label "nonsensical" were it to describe a melee in the street or another venue unguarded by the Fourth Amendment. However, that the intrusion in question occurred within the confines of a dwelling is the unique fact that sets two forces on a collision course: the constitutional protections afforded houses, and our societal commitment to the peacekeeping mission

of law enforcement officials. It is these two forces that must be balanced in assessing the reasonableness of an officer's warrantless entry into a home.

¶21 Brigham City presents us with two primary arguments, both of which were endorsed in Judge Bench's dissenting opinion below, *Stuart*, 2002 UT App 317 at ¶¶ 17-22. First, Brigham City argues that a showing of exigent circumstances was unnecessary because the entry could have been alternatively justified under the emergency aid doctrine. *See id.* at ¶ 19 n.1 ("The officers might also have been justified in entering the residence pursuant to the emergency aid doctrine, a variant to the exigent circumstances exception."). Second, Brigham City argues that the facts of this case were sufficient to present exigent circumstances. *Id.* at ¶ 21. In reaching this same conclusion, Judge Bench compared the facts in *Stuart* to those in *State v. Comer*, 2002 UT App 219, 51 P.3d 55, a court of appeals case affirming the lawfulness of an entry into a home by officers responding to a call that a family fight was in progress, and concluded that here, greater evidence of actual or threatened harm likewise justified a warrantless entry of the house. *Stuart*, 2002 UT App 317 at ¶¶ 17-19. Judge Bench rejected the majority's assertion that *Comer* was narrowly applicable to warrantless entries based on evidence of domestic violence. *Id.* at ¶ 20. We address each of Brigham City's arguments in turn.

I. EMERGENCY AID DOCTRINE

¶22 Under the emergency aid, or medical emergency, doctrine, law enforcement officers may enter a dwelling without a warrant. The emergency aid doctrine strikes a balance between the rights protected by the Fourth

Amendment and the interests of government to access a dwelling to safeguard the well-being of citizens. The doctrine permits police to make "warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid . . . [because] '[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" *Mincey*, 437 U.S. at 392 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)); *see also State v. Frankel*, 847 A.2d 561, 568 (N.J. 2004) ("The emergency aid doctrine is derived from the commonsense understanding that exigent circumstances may require public safety officials, such as the police . . . to enter a dwelling without a warrant for the purpose of protecting or preserving life, or preventing serious injury."). The purpose and motivation for actions performed under the emergency aid doctrine distinguish them from conduct subject to constitutional oversight. Officers who render emergency aid are not serving as peacekeepers or in a law enforcement capacity, but rather as caretakers.

¶23 Utah courts have adopted a three-prong test that renders a warrantless search lawful under the emergency aid doctrine when the following conditions are met:

> "(1) Police have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life.
>
> (2) The search is not primarily motivated by intent to arrest and seize evidence.
>
> (3) There is some reasonable basis to associate the emergency with the area or place to be searched."

Comer, 2002 UT App 219 at ¶ 5 n.1 (quoting *Salt Lake City v. Davidson*, 2000 UT App 12, ¶ 12, 994 P.2d 1283). Because officers who act under the emergency aid doctrine are not conducting a law enforcement mission, they may do so without either obtaining a warrant or demonstrating the presence of probable cause or exigent circumstances.

¶24 To reduce the likelihood of misuse of the emergency aid doctrine as a less demanding substitute for a warrant or the more traditional justifications for a warrantless search, the emergency aid entry is justified only where there is "some reliable and specific indication of the probability that a person is suffering from a *serious* physical injury." *Id.* at ¶ 20 (emphasis added). This standard has been further refined to require an "objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead" is in the home. *Id.* at ¶ 19. Furthermore, because of the emergency aid doctrine's link to a police officer's caretaking, it may be invoked only when the purpose of the intrusion is to "enhance the prospect of administering appropriate medical assistance, and the rationale is that the need to protect life or avoid serious injury to another is paramount." Tracy A. Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects Under Medical Emergency Exception to Warrant Requirement*, 11 A.L.R.5th 52 § 2(a); *see also Frankel*, 847 A.2d at 569 (test under emergency aid doctrine states that the public safety official's "primary motivation for entry into the home must be to render assistance").

¶25 What the content and rationale of the emergency aid doctrine make clear is that, notwithstanding a generalized desire or expectation that police officers can and will intervene to aid those who suffer injury, the value

we place on constitutional protections afforded a dwelling imposes a heightened threshold on the degree of actual or impending harm which will justify such an intrusion. Consequently, intrusions to administer aid to less severe injuries may render unconstitutional a search or seizure made incident to the warrantless entry.

¶26 The balancing of interests that informs the emergency aid doctrine does not, contrary to Brigham City's assertion, sanction the entry into the defendants' residence. The magnitude of the harm fell short of the serious bodily injury threshold necessary to access the emergency aid doctrine. The factual findings to which Brigham City stipulated indicate only that "[a]t one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose." *Stuart*, 2002 UT App 317 at ¶ 12. The findings of fact disclose nothing to indicate that the officers found it necessary to render medical assistance to the victim of the juvenile's blow or otherwise minister to an injury of the severity necessary to support the invocation of the emergency aid doctrine.[3] Instead, the record reveals that the officers acted exclusively in their law enforcement capacity, arresting the adults for alcohol related offenses, and providing no medical assistance whatsoever.

[3] The facts of this case are similar to those in *People v. Allison*, 86 P.3d 421, 423-24 (Colo. 2004), wherein the police responded to a 911 hang-up call, removed a married couple with slight facial injuries, and then re-entered their residence to look for other victims. In holding that the emergency aid doctrine did not apply, the court found it significant that the police did not ask the couple if anyone needed medical assistance before entering the home. *Id.* at 429.

¶27 We recognize that upon entering a residence, an officer may encounter unanticipated circumstances that may heighten or diminish the nature of the emergency that initially prompted officers to enter a dwelling. However, in this case, the officers had a clear view of the interior of the house from their position in the backyard. Any evidence that existed to support an emergency aid entry was acquired by the officers from their position outside the house and not from developments in the altercation that occurred after they entered the kitchen. Therefore, the circumstances known to the officers at the time of entry did not create a reasonable belief that emergency aid was required.

II. EXIGENT CIRCUMSTANCES DOCTRINE

¶28 We next turn to the question of whether the officers' intrusion was justified as a law enforcement activity undertaken pursuant to exigent circumstances. The level of harm necessary to invoke the emergency aid doctrine clearly satisfies the exigent circumstances standard. *See United States v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002) ("[W]e conclude emergency situations involving endangerment to life fall squarely within the exigent circumstances exception."). The question we confront here, however, is whether some lesser actual or threatened harm than that required to justify an emergency aid intrusion will support a warrantless search based on exigent circumstances and, if it can, whether the conduct which stimulated the Brigham City officers to enter the residence meets this standard. We conclude that although the range of actual or imminent injury that will support an exigent circumstances intrusion is more expansive than that available under the emergency aid doctrine,

the court of appeals correctly held that exigent circumstances did not justify the Brigham City officers' warrantless intrusion.[4]

¶29 The primary rationale for permitting police officers greater latitude in justifying an exigent circumstances intrusion than an emergency aid intrusion flows from the different role assumed by officers acting in the face of exigent circumstances. Officers who act in the face of exigent circumstances are pursuing a law enforcement mission, not acting as caretakers. Although this classification scheme is artificial and simplistic, representing just two of many roles that trained police officers integrate confidently and intuitively in their professional lives, it does provide a useful tool to help understand and evaluate warrantless intrusions. It is the presence or absence of probable cause that gives analytical direction to whether a police officer entering a home without a warrant has done so as a caretaker under the emergency aid doctrine or in a law enforcement capacity under the exigent circumstances standard.

¶30 To justify a warrantless entry based on exigent circumstances, a reasonable person must believe that the entry "was necessary to prevent physical harm to the officers or other persons." *Beavers*, 859 P.2d at 18. This standard demands a lesser degree of harm or threat of harm than that necessary to invoke the emergency aid doctrine. The distinction between the approaches to harm

[4] The court of appeals appears to have applied a threshold of harm under the exigent circumstance doctrine similar to that required to justify an emergency aid intrusion when it observed that the trial court made no findings to support "an immediate serious threat or . . . a threat of escalating violence." *Stuart*, 2002 UT App 317 at ¶ 13.

taken by the emergency aid and exigent circumstances doctrines is evident from the inclusion of officer safety as a consideration in passing judgment on an entry justified as an exigent circumstance. An officer who acts in a caretaker capacity when providing emergency aid is not likely to expose himself to the risk of harm. The sole consideration is the well being of persons inside a dwelling who are entitled to privacy, but who also may be in dire need of aid.

¶31 The same cannot be said for the officer faced with probable cause that a crime has been committed. Officer safety is of concern whenever an officer acts in his law enforcement role. The degree of potential harm to an officer that is necessary to create an exigent circumstance is minimal, reflecting the high value we place on the security of peace officers. *See State v. James*, 2000 UT 80, ¶ 10 n.3, 13 P.3d 576 (citing *Knowles v. Iowa*, 525 U.S. 113, 117-18 (1998)) (noting that the threat to an officer's safety in a routine traffic stop is significantly less than in a custodial arrest, but nevertheless high enough to merit asking the driver to step out of the vehicle).

¶32 The safety of the Brigham City officers is not at issue here. The sole justification for the warrantless entry was the safeguarding of the inhabitants of the dwelling. The rationale for the reduced quantum of harm necessary to justify an exigent circumstance intrusion for the officer does not extend to the inhabitants of a home. Our respect for officer safety flows from our recognition of the dangers inherent in law enforcement. However, the license extended to law enforcement to protect themselves from harm does not apply when the "other persons" covered by the *Beavers* articulation of the exigent circumstances standard are the inhabitants of a dwelling. Unlike law enforcement officers, the inhabitants own the right to be

free in their homes from unreasonable searches and seizures. They may well choose to expose themselves to greater actual or potential harm to preserve their right to be left alone in their homes. They may even engage in acts that meet the legal definition of assault, thereby creating probable cause, but that nevertheless do not create an exigent circumstance authorizing a warrantless intrusion.

¶33 Although linked in the *Beavers* formulation of exigent circumstances, law enforcement officers and inhabitants of dwellings do not share the same threshold of harm necessary to justify a warrantless entry based on exigent circumstances because each possesses different and distinct interests. To the inhabitant of a dwelling who, unlike the law enforcement officer, does not face the reality of danger as a constant workday presence, the warrantless intrusion of a law enforcement officer may be an unwelcome invasion of privacy, even if the inhabitant has sustained an injury. Consequently, the difference between the quantum of harm necessary to invoke the emergency aid and exigent circumstances doctrines is greatest when probable cause is present and a law enforcement officer is exposed to risk, but is of lesser magnitude when the threat of harm is to the inhabitant of the dwelling.

¶34 Here the Brigham City officers entered the home after witnessing four adults attempt to restrain a juvenile, the juvenile break a hand free and strike an adult in the face, and the adults struggle to regain control of the juvenile. When, after entering the kitchen of the house, the officer gained the attention of its occupants the altercation abated. It was the acknowledged presence of the authority of the police that quenched the heat in the kitchen.

¶35 The degree of harm suffered by the adult victim of the juvenile's blow certainly nudges the line of that degree of harm sufficient to create an exigent circumstance. The restraint of the juvenile by the adults, both before and after the blow was struck, is less worthy of justifying an exigent circumstance, but underscores the reality that this case presents us with a close and difficult call. The efforts by the adults to control the juvenile certainly met the legal definition of an assault. If all that were required to authorize a warrantless entry into a home was probable cause that an assault of any severity whatsoever had occurred within the dwelling, the exigent circumstance component of the doctrine would disappear, subsumed within the probable cause requirement.[5] The record reveals that the police officers heard the adults couple their efforts to physically restrain the juvenile with demands that he "calm down." The scene that played out before the officers prior to their entry into the kitchen was one in which the unanswered question was not whether the occupants of the kitchen were going to escalate the violence but instead whether the adults would be successful in accomplishing their goal of subduing the juvenile.

¶36 It is reasonable to believe that while still outside the house the police officers understood that a display of official authority would likely have the desired effect of restoring peace. That is in fact what occurred after the police entered the house. The spreading awareness of police presence ended the confrontation between the

[5] The nature of a crime or suspicion of criminal activity creating probable cause can, however, contribute to establishing exigent circumstances. *State v. Schlosser*, 774 P.2d 1132, 1137 (Utah 1989) (citing *United States v. Hensley*, 469 U.S. 221, 226 (1985)).

adults and the juvenile. As noted by the trial court, the officers made no attempt to knock before entering. While the trial court noted further that owing to the noise and tumult in the kitchen a knock "probably would not have been heard," the officers nevertheless gave no thought to the constitutional implications associated with where they announced their presence. On the July night of the incident, only a screen door separated the officers from the kitchen. We are left to speculate, although our foray into speculation is appropriate here, whether the officers could have achieved the two-fold objective of quelling the disturbance by making their presence known and honoring the constitutional integrity of the dwelling.

¶37 Our task is to pass judgment on whether the intrusion was reasonable taking into account all the circumstances. *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (citing *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). When it singled out for criticism the officers' failure to knock in advance of entering the dwelling, the trial court was not attempting to balance its ruling atop a slender and fragile legal technicality. It was, instead, securing its decision to the sturdier foundation of the deeply rooted constitutional and statutory[6] dignity afforded a dwelling. We therefore agree with the court of appeals and the trial court that the Brigham City officers entered the dwelling without aid of an exigent circumstance.

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[6] *See* Utah Code Ann. § 77-7-8 (2003) (officer must demand admission and explain purpose for entering before making a forcible entry to a building or dwelling in order to arrest an occupant) and § 77-23-210 (2003) (officer must give notice of authority and purpose before executing search warrant).

¶38 In considering the exigent circumstances doctrine, the court of appeals split over the applicability of its opinion in *State v. Comer*, 2002 UT App 219, to the Brigham City intrusion. *Stuart*, 2002 UT App 317. In *Comer*, police officers responded to a citizen's report of a domestic fight. *Comer*, 2002 UT App 219 at ¶ 2. A female occupant of the residence answered the officers' knock on the door. *Id.* The occupant stepped onto the porch, where the officers explained why they were there. *Id.* After telling the officers that her husband was inside the home, the occupant "immediately turned and walked back inside the residence." *Id.* The officers followed and came upon the husband who had scratch marks on his upper body. *Id.* at ¶ 3. The court of appeals affirmed the trial court's finding of exigent circumstances. *Id.* at ¶ 27.

¶39 Judge Bench's dissent in *Stuart* found *Comer* to be controlling. *Stuart*, 2002 UT App 317 at ¶ 17. The majority limited *Comer*'s reach to "domestic violence" situations. *Id.* at n.2. Judge Bench found this to be an unsatisfying distinguishing characteristic. *Id.* at ¶ 20. According to him, it makes little sense to hold police officers to a dual standard, barring an intrusion into a home when conduct amounting to an assault occurs between persons who do not meet the definition of "cohabitants," but permitting it when they do. *Id.* He implies that since assaultive conduct within a home will frequently be accompanied by ambiguity over its status as "domestic violence," all assaults which occur within a home should be presumed to be between cohabitants and therefore police officers who respond to them should be entitled to

access the home under the exigent circumstance analysis which sanctioned the intrusion in *Comer*. *Id.*[7]

¶40 Although we express no view on whether *Comer* was correctly decided, we note the Fourth Amendment protections afforded a dwelling and the unquestioned evils of domestic violence are powerful forces pulling a police officer standing on the threshold of a home in opposite directions: the Fourth Amendment pushing him toward a magistrate and a warrant, domestic violence drawing him through the door to intervene in one of the most common and volatile settings for serious injury or death. We are wary of making sweeping pronouncements in the face of these important, but contradictory, concerns. We also decline to signal our approval for any categorical extension of the exigent circumstances which would permit a warrantless entry into a home, even where to do so may prove beneficial in controlling the scourge of domestic violence, because a categorical extension would unduly threaten the special protection the Fourth Amendment bestows on people in their homes.

¶41 Moreover, *Comer* differs factually from this case in one significant respect not addressed by the court of appeals. The single fact that tipped the balance in favor of concluding that the *Comer* intrusion was reasonable and justified as an exigent circumstance was the abrupt and

[7] The Utah Legislature has defined "domestic violence" as "any criminal offense involving violence . . . when committed by one cohabitant against another." Utah Code Ann. § 77-36-1(2) (2003). By this definition, any altercation taking place within a home may result in a reasonable belief that the participants are cohabitants committing domestic violence. This interpretation would appear to be consistent with the elevated status of domestic violence as an exigent circumstance advanced by Judge Bench in his dissent.

unexplained re-entry into the home by the female occupant after she had been made aware of the fact of and purpose for the police officers' presence at her home. *See* 2002 UT App 219 at ¶ 26 (noting that the female occupant's re-entry may have indicated to the officers that any number of situations was about to occur, including the continuation of the altercation or an attempt to cover up evidence). The court of appeals surmised that the female's odd behavior reasonably heightened the officers' suspicions that her retreat into the dwelling would be followed by the commission of a domestic assault. *Id.* In contrast, the officers in this case could not assess whether assaultive behavior would continue after their presence was made known to the occupants of the dwelling before entering the kitchen because they made no effort to announce their presence.

¶42 In *Mincey*, the United States Supreme Court struck down Arizona's murder scene exception – a *per se* rule permitting warrantless searches whenever a homicide is committed. 437 U.S. at 395 ("[A] warrantless search . . . [was] not constitutionally permissible simply because a homicide had recently occurred."); *see also Payton*, 445 U.S. at 590 (exigent circumstances required to cross threshold into home despite state statute authorizing warrantless entry to make felony arrests). More recently, the Supreme Court has explained that

> we have treated reasonableness as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case; it is too hard to invent categories without giving short shrift to details that turn out to be important in

> a given instance, and without inflating marginal ones.

United States v. Banks, 540 U.S. 31, 36 (2003) (discussing reasonableness in execution of search warrants).

¶43 Similarly, in *Comer*, the Utah Court of Appeals "decline[d] to adopt a rule whereby a reliable domestic disturbance report, by itself, would be viewed as supporting" a warrantless entry based on a presumed "serious physical injury." *Comer*, 2002 UT App 219 at ¶ 20. Although a serious crime, domestic violence reports "run the whole range from simply having a verbal argument to severe violence." *Id.* at ¶ 5. Furthermore, Utah law permits officers to "use all *reasonable* means" they may deem "*reasonably* necessary to provide for the safety of the victim and any family or household member" where domestic violence is apparent. Utah Code Ann. § 77-36-2.1(1)(a) (2003) (emphasis added). Thus, even in instances of domestic violence, police are required to assess the situation and conform their actions to a standard of reasonableness, entering only when an exigency is present. *See Comer*, 2002 UT App 219 at ¶ 27 n.11 (the police "can effectively address the volatility of domestic disputes through the *existing* exigent circumstances exception to the warrant requirement" (emphasis added)); *see also United States v. Davis*, 290 F.3d 1239, 1244 (10th Cir. 2002) ("[W]e hold an officer's warrantless entry of a residence during a domestic call is not exempt from the requirement of demonstrating exigent circumstances."); *State v. Frankel*, 847 A.2d 561 (N.J. 2004) (rejecting *per se* rule permitting warrantless entry on basis of a 911 hang-up call); *Commonwealth v. Kiser*, 724 N.E.2d 348, 351 (Mass. App. Ct. 2000) (loud party is "not the sort of riotous

behavior that justified entry under the statute" which was intended to permit entry for breach of peace).

¶44 We are also unwilling to replace the reasonableness requirement with a per se rule concerning domestic violence that disregards other factors in the totality of the circumstances. Our rejection of a rule that would grant a suspicion of domestic violence the status of a per se exigent circumstance does not render considerations of domestic violence irrelevant. Just as it would be unwise to permit factors bearing on domestic violence to sweep aside other relevant considerations when applying a totality of the circumstances assessment, it would be likewise improper to dismiss the domestic violence as a factor which could contribute to a finding of exigent circumstances. There was no finding that any of the parties to the altercation in the Brigham City home were cohabitants, and therefore, domestic violence considerations have no place in the evaluation of whether exigent circumstances justified the intrusion.

¶45 The decision of the court of appeals is affirmed.

¶46 Chief Justice Durham and Justice Parrish concur in Justice Nehring's opinion.

DURRANT, Justice, concurring and dissenting:

¶47 Although I agree with much of the majority's opinion, I respectfully dissent from its application of the exigent circumstances doctrine to the facts of this case. In my view, the Fourth Amendment does not prescribe paralysis when law enforcement officials are eyewitnesses

to an ongoing assault and immediate intervention is necessary to prevent physical harm.

¶48 The question posed by this appeal is whether police officers who personally witness an ongoing physical altercation in a residence may enter that residence in order to prevent bodily harm, or whether those officers must remain rooted onlookers, waiting passively for violence to escalate to a point at which severe harm is likely to occur. Unlike the majority, I conclude that the Fourth Amendment does not require police officers to be spectators in the face of ongoing violence and, in fact, allows officers to intervene in circumstances like those present in this case.

¶49 The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Although the amendment has been interpreted as drawing "a firm line at the entrance to the house," *Payton v. New York*, 445 U.S. 573, 590 (1980), that line can be crossed so long as the government entry is reasonable under the circumstances, *see Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (observing that the Fourth Amendment's "'central requirement' is one of reasonableness"); *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) ("The touchstone of our analysis under the Fourth Amendment is [and] always [has been] the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." (internal quotation omitted)).

¶50 It is well established that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton*, 445 U.S. at 586. However, "[t]he

ordinary requirement of a warrant is sometimes supplanted by other elements that render the unconsented search 'reasonable.'" *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990). As the majority correctly acknowledges, a warrantless entry into a home is reasonable if the entry can be justified under either the emergency aid or exigent circumstances doctrine. *See, e.g.*, *Welsh v. Wisconsin*, 466 U.S. 740, 749-50 (1984); *State v. Comer*, 2002 UT App 219, ¶¶ 17, 21, 51 P.3d 55; *State v. Beavers*, 859 P.2d 9, 18 (Utah Ct. App. 1993). Both of these doctrines allow for warrantless entries to prevent physical harm. *See, e.g.*, *Mincey v. Arizona*, 437 U.S. 385, 392 (1978) (stating that the need to protect life or prevent injury in an emergency or exigent situation justifies otherwise unconstitutional behavior); *Comer*, 2002 UT App 219 at ¶ 5 n.1 (noting that the emergency aid doctrine can be invoked when officers "have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need [of] assistance for the protection of life"); *Beavers*, 859 P.2d at 18 (observing that exigent circumstances exist when officers reasonably believe immediate entry is required "to prevent physical harm to the officers or other persons" (internal quotation omitted)).

¶51 I agree with the majority that, in this case, the trial court's factual findings cannot be read to justify the officers' warrantless entry on the theory that the officers were supplying "emergency aid." I disagree, however, with the majority's conclusion that the situation encountered by the officers was insufficiently "exigent" to justify an immediate entry.

¶52 "There is . . . no absolute test for determining whether exigent circumstances are present because such a determination ultimately depends on the unique facts of

each case." *United States v. Gray*, 71 F. Supp. 2d 1081, 1084 (D. Kan. 1999) (citing *United States v. Anderson*, 154 F.3d 1225, 1233 (10th Cir. 1998)). "Generally, exigency does not evolve from one individual fact. Instead, there is a mosaic of evidence, no single part of which is itself sufficient." *State v. Ashe*, 754 P.2d 1255, 1258 (Utah 1987). Consequently, a reviewing court must evaluate the totality of the facts and circumstances surrounding the warrantless entry, *see id.*, while considering how those facts and circumstances "would have appeared to prudent, cautious, trained officers," *Gray*, 71 F. Supp. 2d at 1084.

¶53 The majority accurately acknowledges that the emergency aid and exigent circumstances doctrines impose different thresholds of harm that must be met before the doctrines can be properly invoked. *See supra* ¶ 29. As evidence of this distinction, the majority reasons that officers are more likely to encounter threats to their personal safety when pursuing a law enforcement objective than when serving in a caretaking capacity. *See supra* ¶¶ 29-30. That distinction does partially explain why the exigent circumstances doctrine can be invoked in situations where the level of harm at issue is significantly lower than in an emergency aid situation.

¶54 However, in my view, the pivotal reason for requiring a lower quantum of harm in the exigent circumstances context is that officers invoking exigency must first show probable cause of criminal activity before making a warrantless entry, a requirement absent in the emergency aid context. Because invocation of the exigent circumstances doctrine demands the presence of probable cause, that doctrine is a significantly less dramatic departure from typical Fourth Amendment requirements than the emergency aid doctrine. This fact diminishes the

necessity of demanding high level of physical harm before allowing a warrantless entry in exigent circumstances, as the high physical harm threshold of the emergency aid doctrine is set, at least partially, to ensure that the doctrine is not utilized as mere pretext.

¶55 Here, the officers were justified in entering the residence because, at the time of their entry, they possessed both probable cause that a continuing assault was being committed within the residence[1] and a reasonable belief that an immediate entry was necessary to prevent physical harm to others. *See Beavers*, 859 P.2d at 17-18.

¶56 According to the trial court, officers investigating a noise complaint observed underage drinking through a slat fence bordering the backyard of the residence that was the subject of the complaint. Upon entering the backyard, the officers were able to see into the residence through windows and a screen door. At that moment, the officers became eyewitnesses to a physical altercation involving five individuals, one of whom was a juvenile. The officers saw the four adults attempting to restrain the juvenile. It could not have been clear which of the parties to the melee were victims and which were instigators. Also, the officers could not have known whether they were witnessing domestic violence, as even trained police officers do not have the necessary clairvoyance to instantly determine if participants in a physical altercation are

[18] The officers also had probable cause to believe that multiple other crimes were occurring. Before entering the residence, the officers had already directly observed underage drinking, intoxication, and disorderly conduct. Arrests were ultimately made for contributing to the delinquency of a minor, furnishing alcohol to minors, disorderly conduct, and intoxication.

members of the same household. The officers, while observing the ongoing struggle, saw the juvenile wrest a hand free and "smack" one of the adults in the nose. Given that the officers had already observed underage drinking, they could have reasonably believed that alcohol was fueling the altercation, which had the potential to further escalate and cause additional harm to the participants in the fight. There will be uncertainties in any law enforcement situation. The officers in the present case were, no doubt, uncertain about many things. However, they were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury.

¶57 The Fourth Amendment does not demand certainty before action. It demands only reasonableness. Because there is always some level of uncertainty about the nature of events police officers encounter, "[o]n the spot reasonable judgments by officers about risks and dangers are protected." *Fletcher v. Town of Clinton*, 196 F.3d 41, 50 (1st Cir. 1999). Already armed with probable cause, the officers on the scene reasoned that immediate entry was necessary to prevent harm. That judgment was not unreasonable under the circumstances and does not offend the Fourth Amendment. *See, e.g.*, *id.* at 49 ("Evidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists."); *Tierney v. Davidson*, 133 F.3d 189, 198 (2d Cir. 1998) ("The absence of blood, overturned furniture or other signs of tumult" does not require an officer "to withdraw and go about other business, or stand watch outside the premises listening for the sounds of splintering furniture."); *United States v. Brown*, 64 F.3d 1083, 1086 (7th Cir. 1995) ("We do not think the police

must stand outside an apartment despite legitimate concerns about the welfare of an occupant, unless they can hear screams. Doubtless outcries would justify entry, but they are not essential.").

¶58 The majority would have the officers in this case stand outside, powerless and removed from the location of the brawl. The majority would conclude otherwise, apparently, if a knife had been pulled from a nearby kitchen drawer, elevating the potential severity of physical harm that a participant in the fight – or an innocent bystander – could suffer. The majority's rule consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent.[2]

¶59 The majority contends that the officers were not completely foreclosed from taking action: they could have knocked. The trial court's findings of fact illustrate, however, that the majority puts undue emphasis on the officers' decision to forego knocking before intervening in the fight. While it is true that "the method of an officer's entry into a dwelling [is] among the factors to be considered in assessing the reasonableness of a search and

[2] Of course, the circumstances in which a warrantless entry into a home can be justified, even if the officers possess probable cause, are rare. In fact, there will be many situations where officers who have probable cause to believe that a technical assault is occurring within a home will nevertheless be unjustified in entering that home without a warrant, e.g., if an officer witnesses one individual slap another and there was no prospect of continuing violence. After all, the Fourth Amendment demands that any entry be reasonable under the circumstances. However, in this case we are dealing with the rare situation in which ongoing violence, actually witnessed by police officers, was of a sufficient degree to justify an immediate entry.

seizure," *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995), it is not unreasonable for officers to bypass knocking or announcing their presence if such an action would be futile, dangerous, or inhibit an effective investigation of the suspected crime, *see Richards v. Wisconsin*, 520 U.S. 385, 394 (1997); *see also Ingram v. City of Columbus*, 185 F.3d 579, 588 (6th Cir. 1999) (stating that just as certain exigencies excuse the warrant requirement, certain circumstances excuse officers from announcing their presence before entering a dwelling). The trial court's unchallenged findings note that the officers encountered a "loud, tumultuous" situation and that a knock on the door would have almost certainly gone unnoticed. In fact, evidence adduced below showed that, even after entering the residence, the officers had to shout above the din multiple times before the occupants became aware of their presence.

¶60 When it is apparent that an immediate physical entry into a dwelling is necessary in order to quell ongoing violence, it is ill-advised to require officers to waste precious time on the doorstep engaged in a futile attempt to announce their presence. The Fourth Amendment does not require such empty gestures.

¶61 Although the officers in this case were faced with uncertainties, the critical aspects of the situation were clear. The officers were eyewitnesses to a "loud, tumultuous," and ongoing brawl. Alcohol was obviously being consumed, one blow had been struck, and the officers could have reasonably believed that their intervention was necessary to prevent further injuries. In such a potentially volatile situation, neither the Fourth Amendment nor sound public policy prevents police intervention to secure the peace and protect the public. Accordingly, I

would conclude that the officers did not offend the Fourth Amendment's reasonableness requirement in the present case and would therefore reverse the court of appeals.

¶62 Associate Chief Justice Wilkins concurs in Justice Durrant's opinion.

IN THE UTAH COURT OF APPEALS

– – ooOoo – –

Brigham City,
a municipal corporation,
Plaintiff and Appellant,

v.

Charles W. Stuart,
Shayne R. Taylor,
and Sandra A. Taylor,
Defendants and Appellees.

OPINION
(For Official Publication)

Case No. 20010479-CA

FILED
October 3, 2002

2002 UT
App 317

First District, Brigham City Department
The Honorable Clint S. Judkins

Attorneys:
Leonard J. Carson, Brigham City, for Appellant
Rod Gilmore, Layton, for Appellees

Before Judges Bench, Greenwood, and Thorne.

THORNE, Judge:

¶1 Brigham City appeals from an interlocutory order granting Defendants' joint Motion to Suppress Evidence

collected after Brigham City police officers entered a private residence without first obtaining a warrant. We affirm.

BACKGROUND

¶2 On July 23, 2000, at approximately 3:00 a.m., four Brigham City police officers responded to a loud party complaint. After arriving at the house, the officers proceeded to the back of the house to investigate the noise. From the driveway, through a slat fence, the officers saw two young men, who appeared to be under age, consuming alcohol. The officers entered the backyard through a gate, thereby obtaining a clear view into the back of the house.

¶3 Looking into the house through a screen door and two windows, the officers observed four adults restraining one juvenile. The juvenile, who was struggling to break free, managed to swing his fist and strike one of the adults in the face. Two of the officers then opened the screen door and stepped into the house. Only after entering the house did one of the officers shout to identify and call attention to himself. One by one, each person in the kitchen became aware of and acknowledged the officers' presence, then become angry that the officers had entered the house without permission.

¶4 The officers subsequently arrested each of the adults and charged them with: contributing to the delinquency of a minor, disorderly conduct, and intoxication. Defendants filed a joint Motion to Suppress Evidence. After an evidentiary hearing, the trial court granted Defendants' motion. Brigham City submitted a proposed order to the trial court that contained the trial court's

findings of fact. That order was signed as proposed and it is from this order that Brigham City now appeals.

ISSUES AND STANDARD OF REVIEW

¶5 We review the factual findings underlying a trial court's decision to grant or deny a motion to suppress evidence for clear error, and the legal conclusions for correctness, "with a measure of discretion given to the trial judge's application of the legal standard to the facts." *State v. Moreno*, 910 P.2d 1245, 1247 (Utah Ct. App. 1996).

¶6 In the present case, neither party disputes the written factual findings that support the trial court's legal conclusion that no exigent circumstances justified the officers' warrantless entry into the private residence. We accordingly review the trial court's application of Fourth Amendment principles to the undisputed facts of this case. *See id.*

ANALYSIS

¶7 Brigham City argues the trial court erred in determining that there were no exigent circumstances to justify the warrantless entry into a private residence. "A warrantless search of a residence is constitutionally permissible where probable cause and exigent circumstances are proven." *State v. Yoder*, 935 P.2d 534, 540 (Utah Ct. App. 1997). When a private residence is involved, the State's burden in proving the existence of probable cause and exigent circumstances is "particularly heavy." *Id.* (citations and quotations omitted). This elevated burden is a result of the "heightened expectation of privacy" that citizens enjoy in their homes. *State v. Beavers*, 859 P.2d 9, 13 (Utah Ct. App. 1993).

¶8 Exigent circumstances exist where a reasonable person in the officers' position would "'believe that entry was necessary to prevent physical harm to the officers or other persons, [to prevent] the destruction of relevant evidence, [to prevent] the escape of the suspect,'" or to prevent the improper frustration of legitimate law enforcement efforts. *Beavers*, 859 P.2d at 18 (citation and ellipsis omitted). In addition, the need for immediate entry must be apparent to police at the time of entry, and so strong as to outweigh the important protection of individual rights provided under the Fourth Amendment. *See id.*

¶9 Our determination of exigency is based upon an examination of the totality of the circumstances. *See State v. Wells*, 928 P.2d 386, 389 (Utah Ct. App. 1996), *aff'd*, 939 P.2d 1204. We grant the trial court a degree of discretion in determining the ultimate disposition because "'the facts to which the legal rule is to be applied are so complex and varying that no rule adequately addressing the relevance of all these facts can be spelled out. . . . '" *State v. Teuscher*, 883 P.2d 922, 929 (Utah Ct. App. 1994) (ellipsis in original) (quoting *State v. Pena*, 869 P.2d 932, 939 (Utah 1994)).

¶10 We first address Brigham City's request, made during oral argument, that this court make any additional findings of fact that might be necessary to find exigent circumstances in this case. However, an "'appellate court is entrusted with ensuring legal accuracy and uniformity and should defer to the trial court on factual matters.'" *Bailey v. Bayles*, 2002 UT 58,¶19, 52 P.3d 1158 (quoting *Willey v. Willey*, 951 P.2d 226, 230-31 (Utah 1997)). The supreme court has further determined:

> It is inappropriate for an appellate court to disregard the trial court's findings of fact and to assume the role of weighing evidence and making its own findings of fact.
>
> . . .
>
> The court of appeals is limited to the findings of fact made by the trial court and may not find new facts or reweigh the evidence. . . .

Id. at ¶¶19-20.

¶11 In addition, Brigham City has previously forsaken an opportunity to shape the trial court's findings of fact.[1] Brigham City has not, however, challenged the trial court's factual findings. We therefore accept the findings as adopted and are in no position to supplement these findings. Thus, based upon the factual findings set forth in the trial court's order, we review the trial court's legal conclusion that no exigent circumstances existed in this case.

¶12 Brigham City next argues that the circumstances, as found by the court, clearly establish exigent circumstances supporting the officers' warrantless entry into the private residence. The trial court made the following findings of fact:

[1] The trial court first directed Defendants to draft and submit an appropriate order. Brigham City, however, objected to the findings as drafted and proffered a substitution. Over Defendant's objections, the trial court adopted Brigham City's version of the order and findings. Therefore, any findings Brigham City considered necessary to support a conclusion of exigent circumstances should have been included in this order.

1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City Polic[e] officers were dispatched . . . as a result of a call concerning a loud party.

2. After arrival at the residence, the officers, from their observations from the front of the residence, determined that it was obvious that knocking on the front door would have done no good. It was appropriate that they proceed down the driveway alongside the house to further investigate.

3. After going down the driveway on the side of the house, the officers could see, through a slat fence, two juveniles consuming alcoholic beverages. At that point, because of the juveniles, there was probable cause for the officers to enter into the backyard.

4. Upon entering the backyard, the officers observed, through windows and a screen door an altercation taking place, wherein it appeared that four adults were trying to control a juvenile. At one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose.

5. At that point in time, the court finds no exigent circumstances to justify the officer's entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard, but under the 4th amendment he has an obligation to at least attempt before entering.

¶13 After reviewing the trial court's ruling, we conclude that the trial court properly determined that the officers' warrantless entry into the private residence was not justified by the circumstances. The trial court found that some sort of altercation had occurred in the house, but made no findings from which we could reasonably conclude that the altercation posed an immediate serious threat or created a threat of escalating violence. Furthermore, the officers did not immediately physically intervene in the situation, draw weapons, or otherwise act in a manner suggesting an emergency. Neither do the trial court's findings support a conclusion that the destruction of evidence would have occurred, that the escape of any suspect was imminent, or that any legitimate law enforcement effort would have been frustrated had the officers not been granted immediate entry into the home. On these limited facts, we affirm the trial court's conclusion that exigent circumstances did not exist.[2]

[2] In reaching its conclusion, the dissent relies upon *State v. Comer*, 2002 UT App 219, 51 P.3d 55, where police entered a home without a warrant in response to a domestic violence complaint. *Id.* at ¶23. In *Comer*, "admittedly a close case," we stated that "the officers had probable cause to believe a domestic violence offense had been, or was being, committed." *Id.* at ¶25. We noted that a "'domestic violence complaint' is 'one of the most potentially dangerous, volatile arrest situations confronting police.'" *Id.* (citations omitted). We identified the specific facts that would prompt the police to believe "there was no time to get a warrant and/or that [their] presence was necessary to prevent physical harm to persons or the destruction of evidence." *Id.* at ¶26. The combination of these factors warranted a finding of exigent circumstances. *See id.* The holding in *Comer*, however, should be narrowly construed, *see id.* at n.11 (characterizing the *Comer* opinion as adopting approach "for analyzing warrantless police entry into a private residence after receipt of a report of domestic violence at that residence") and only applies when the threat of continued domestic violence is present.

(Continued on following page)

¶14 Brigham City next argues that the officers were justified in entering this private residence because the officers observed, first-hand, the commission of a crime. Generally, absent exceptional circumstances or plain error, a party who fails to bring an issue to the trial court's attention is barred from asserting it on appeal. *See State v. Archambeau*, 820 P.2d 920, 922 (Utah Ct. App. 1991). Brigham City neither raised this argument to the trial court, nor argued plain error or exceptional circumstances on appeal. We therefore decline to address this argument.

CONCLUSION

¶15 Because we defer to the trial court's findings of fact and, to a limited extent, to the trial court's application of those facts to the law, we conclude that the trial court did not err in concluding that no exigent circumstances existed under these facts. Therefore, we affirm the trial court's grant of Defendants' Motion to Suppress all evidence resulting from the officer's entry into the private residence.

The case at bar is distinguishable from *Comer*, for this is not a "domestic violence" situation. Additionally, the trial court found that the juvenile who seemed to be causing the commotion was restrained when the police arrived. Thus, except for the fact that the juvenile's hand broke loose and "smacked one of the occupants of the residence in the nose," all violence had ceased by the time the officers arrived. Also, unlike *Comer*, the police in the case at bar had a clear view of the interior of the home and could have intervened had further violence ensued.

William A. Thorne Jr., Judge

¶16 I CONCUR:

Pamela T. Greenwood, Judge

BENCH, Judge (dissenting):

¶17 The outcome of this case is controlled by our recent decision in *State v. Comer*, 2002 UT App 219, 51 P.3d 55. In *Comer*, officers arrived at a home after receiving a call from a citizen that a family fight was in progress. *See id.* at ¶2. The defendant opened the door and stepped out onto the porch. *See id.* The officers explained to her why they were there and asked if anyone else was home. *See id.* The defendant did not respond, but "'immediately turned and walked back inside the residence.'" *Id.* The officers followed and discovered defendant's husband who had marks on his body indicating he had been assaulted. *See id.* at ¶3. While arresting the defendant for assault, the officers also discovered drugs and drug paraphernalia. *See id.* at ¶4.

¶18 We concluded that both probable cause and exigent circumstances existed to justify the officers' warrantless entry into the defendant's home. *See id.* at ¶27. We cited several reasons why the defendant's unexplained behavior "would cause an officer to reasonably believe there was no time to get a warrant and/or that his presence was necessary to prevent physical harm to persons or the destruction of evidence," including the officers' reasonable fear

that defendant retreated to "immediately resume the altercation reported." *Id.* at ¶26.

¶19 If, as we concluded in *Comer*, an individual's unexplained behavior and retreat posed an exigent circumstance, then certainly a fight in progress qualifies as an exigent circumstance. In this case, the officers responded to a citizen's call in the middle of the night about a "loud party or altercation." The trial court found that the fight they witnessed was so "loud" and "tumultuous" that the occupants of the residence could not have heard a knock at the door. The officers personally observed a group of adults restrain a juvenile, who broke loose one arm and "smacked one of the [adults] in the nose." These findings do not support the trial court's conclusion that the officers' warrantless entry into the home was not justified by exigent circumstances.[1]

¶20 The majority argues that *Comer* is distinguishable and should be narrowly construed to apply only to known incidences of domestic violence. I disagree that the exigent circumstances doctrine applies only to domestic violence situations. However, even assuming, as the majority does, that *Comer* only applies to domestic violence, this case is not distinguishable. The difference between a simple assault and a domestic violence assault is the relationship between the parties involved. From their vantage point outside the house, the officers in this case could not know whether any of the combatants in the house were "cohabitants" as defined by Utah Code Ann.

[1] The officers might also have been justified in entering the residence pursuant to the emergency aid doctrine, a variant to the exigent circumstances exception. *See Salt Lake City v. Davidson*, 2000 UT App 12,¶10, 994 P.2d 1283.

§ 30-6-1 (Supp. 2002). Based on the fact that a juvenile and several adults were involved and that the altercation was occurring at a residence, it would be reasonable for the officers to assume that the altercation may have been domestic violence. Further, I cannot agree with the majority that the violence had ceased by the time the officers arrived. The officers testified to witnessing a loud, tumultuous altercation where one individual was being physically restrained and another had been struck. Even after entering the house, the officers had a difficult time getting the attention of the combatants. It is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further.

¶21 Alternatively, we could remand to the trial court for a finding on the city's assertion that the officers were justified in entering the house because a crime was being committed in their presence. The majority opinion does not address this argument, claiming that it was not raised before the trial court. However, the record reflects that the city did raise the issue to the trial court in the "Plaintiff's Response to Motion to Suppress." The city alleged that "the exigent circumstances which existed included obvious violations of the law in the plain view and presence of the officers." Because the trial court made no specific findings regarding violations of law, the case could be remanded with instructions to the trial court to address whether the officers were justified in entering the home because a crime was being committed in their presence.

¶22 Accordingly, under *Comer*, I would reverse the trial court's grant of Defendants' motion to suppress. Alternatively, my colleagues should remand for findings on

the city's argument that a crime was being committed in the presence of the officers.

_____
Russell W. Bench, Judge

IN THE FIRST DISTRICT COURT,
BOX ELDER COUNTY, STATE OF UTAH

BRIGHAM CITY, A Municipal Corporation, Plaintiff, v. CHARLES W. STUART, SHAYNE R. TAYLOR, and SANDRA A. TAYLOR, Defendants.	ORDER ON MOTION TO SUPPRESS EVIDENCE Case No. 001100454, 001100456, and 001100460 Judge Clint S. Judkins

This matter came before the court for hearing the 23rd day of March, 2001 on defendants' motion to suppress. Brigham City was represented by James Merrell. Defendants were present and represented by Rod Gilmore. After the presentation of evidence, including testimony and exhibits, the careful review of the parties' pleadings, and after having heard the parties' arguments, the Court hereby finds and orders as follows:

FINDINGS OF FACT

1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City police officers were dispatched to 1074 Orchard St. in Brigham City as a result of a call concerning a loud party.

2. After arrival at the residence, the officers, from their observations from the front of the residence, determined that it was obvious that knocking on the front door would

have done no good. It was appropriate that they proceed down the driveway alongside the house to further investigate.

3. After going down the driveway on the side of the house, the officers could see, through a slat fence, two juveniles consuming alcoholic beverages. At that point, because of the juveniles, there was probable cause for the officers to enter into the backyard.

4. Upon entering the backyard, the officers observed, through windows and a screen door, an altercation taking place, wherein it appeared that four adults were trying to control a juvenile. At one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose.

5. At that point in time, the court finds no exigent circumstances sufficient to justify the officer's entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard him, but under the 4th amendment he has an obligation to at least attempt before entering.

ORDER

Based upon the above findings, and for good cause shown, the Court HEREBY ORDERS:

The Motion to Suppress filed by defendants is GRANTED. All evidence gathered or seized subsequent to the officers' entry into the house, including but not limited to physical evidence, photographs taken, observations made by the officers, and statements and actions made by

the suspects, are HEREBY SUPPRESSED, and not admissible in any further proceeding against the defendants.

DATED, this the 18 day of May, 2001.

BY THE COURT:

/s/
District Court Judge

FILED
UTAH APPELLATE COURTS
JUL 18 2005

IN THE UTAH SUPREME COURT

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Brigham City,

Petitioner,

v. Case No. 20021004-SC

Charles W. Stuart, Shayne R. Taylor, and Sandra A. Taylor,

Respondents.

ORDER

This matter is before the court upon appellant's petition for rehearing, filed on March 18, 2005. By request of the court, the appellees' response to the petition for rehearing was filed on June 6, 2005.

IT IS HEREBY ORDERED that pursuant to Rule 35 of the Utah Rules of Appellate Procedure the petition for rehearing is denied.

For The Court:

July 18, 2005
Date

/s/
Christine M. Durham
Chief Justice